

Supplement 1 to  
Attachment 4.34-A

# Your Right To Make Decisions About Medical Treatment



This brochure explains your rights to make health care decisions and how you can plan what should be done when you can't speak for yourself.

A federal law requires us to give you this information. We hope this information will help you increase your control over your medical treatment.

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### Who decides about my treatment?

Your doctors will give you information and advice about treatment. You have the right to choose. You can say "Yes" to treatments you want. You can say "No" to any treatment you don't want—even if the treatment might keep you alive longer.



### How do I know what I want?

Your doctor must tell you about your medical condition and about what different treatments can do for you. Many treatments have "side effects." Your doctor must offer you information about serious problems that medical treatment is likely to cause you.

Often, more than one treatment might help you—and people have different ideas about which is best. Your doctor can tell you which treatments are available to you, but your doctor can't choose for you. That choice depends on what is important to you.

### What if I'm too sick to decide?

If you can't make treatment decisions, your doctor will ask your closest available relative or friend to help decide what is best for you. Most of the time, that works. But sometimes everyone doesn't agree about what to do. That's why it is helpful if you say in advance what you want to happen if you can't speak for yourself. There are several kinds of "advance directives" that you can use to say *what* you want and *who* you want to speak for you.

One kind of advance directive under California law lets you name someone to make health care decisions when you can't.

This form is called a DURABLE POWER OF ATTORNEY FOR HEALTH CARE.

### Who can fill out this form?

You can if you are 18 years or older and of sound mind. You do not need a lawyer to fill it out.

### Who can I name to make medical treatment decisions when I'm unable to do so?

You can choose an adult relative or friend you trust as your "agent" to speak for you when you're too sick to make your own decisions.

### How does this person know what I would want?

After you choose someone, talk to that person about what you want. You can also write down in the DURABLE POWER OF ATTORNEY FOR HEALTH CARE when you would or wouldn't want medical treatment. Talk to your doctor about what you want and give your doctor a copy of the form. Give another copy to the person named as your agent. And take a copy with you when you go into a hospital or other treatment facility.

Sometimes treatment decisions are hard to make and it truly helps your family and your doctors if they know what you want. THE DURABLE POWER OF ATTORNEY FOR HEALTH CARE also gives them legal protection when they follow your wishes.

### What if I don't have anybody to make decisions for me?

You can use another kind of advance directive to write down your wishes about treatment. This is often called a "living will" because it takes effect while you are

still alive but have become unable to speak for yourself. The California Natural Death Act lets you sign a living will called a DECLARATION. Anyone 18 years or older and of sound mind can sign one.

When you sign a DECLARATION it tells your doctors that you don't want any treatment that would only prolong your dying. All life-sustaining treatment would be stopped if you were terminally ill and your death was expected soon, or if you were permanently unconscious. You would still receive treatment to keep you comfortable, however.



The doctors must follow your wishes about limiting treatment or turn your care over to another doctor who will. Your doctors are also legally protected when they follow your wishes.

#### **Are there other living wills I can use?**

Instead of using the DECLARATION in the Natural Death Act, you can use any of the available living will forms. You can use a DURABLE POWER OF ATTORNEY FOR HEALTH CARE form without naming an agent. Or you can just write down your wishes on a piece of paper. Your doctors and family can use what you write in deciding about your treatment. But living wills that don't meet the requirements of the Natural Death Act don't give as much legal protection for your doctors if a disagreement arises about following your wishes.

#### **What if I change my mind?**

You can change or revoke any of these documents at any time as long as you can communicate your wishes.

**Do I have to fill out one of these forms?**

No, you don't have to fill out any of these forms if you don't want to. You can just talk with your doctors and ask them to write down what you've said in your medical chart. And you can talk with your family. But people will be more clear about your treatment wishes if you write them down. And your wishes are more likely to be followed if you write them down.

**Will I still be treated if I don't fill out these forms?**

Absolutely. You will still get medical treatment. We just want you to know that, if you become too sick to make decisions, someone else will have to make them for you. Remember that:

✓ **A DURABLE POWER OF ATTORNEY FOR HEALTH CARE** lets you name someone to make treatment decisions for you. That person can make most medical decisions—not just those about life-sustaining treatment—when you can't speak for yourself. Besides naming an agent, you can also use the form to say when you would and wouldn't want particular kinds of treatment.

✓ If you don't have someone you want to name to make decisions when you can't, you can sign a **NATURAL DEATH ACT DECLARATION**. This **DECLARATION** says that you do not want life prolonging treatment if you are terminally ill or permanently unconscious.

**How can I get more information about advance directives?**

Ask your doctor, nurse, or social worker to get more information for you.

## DEPARTMENT OF HEALTH SERVICES

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November 18, 1991

TO: ALL HOSPITALS, NURSING FACILITIES, HOME HEALTH AGENCIES, HOSPICES,  
AND HEALTH MAINTENANCE ORGANIZATIONS

SUBJECT: IMPLEMENTATION OF PATIENT SELF-DETERMINATION PROVISIONS OF OBRA 90

Federal law mandates new requirements for specific Medicare and Medi-Cal providers, effective December 1, 1991. These requirements are related to patient self-determination--the right of individuals to make medical treatment decisions and to make advance directives, such as living wills and Durable Powers of Attorney for Health Care. Information about the new requirements and instructions to assist you in meeting this mandate are found below.

While this federal statute applies to health care providers who receive funding from Medi-Cal or Medicare, it is requested that all providers make information available concerning medical treatment decision-making and advance directives. All providers must comply with state law requirements related to advance directives and medical treatment decision-making.

BACKGROUND

These requirements were enacted as part of the federal Omnibus Budget Reconciliation Act (OBRA) of 1990, P.L. 101-508, Sections 4206 and 4751. Changes to the Medicare requirements may be found at 42 U.S.C. 1395cc(a)(1)(Q) et seq. Medicaid changes are at 42 U.S.C. 1396a(a)(57) et seq. These changes take effect on December 1, 1991.

SUMMARY OF THE REQUIREMENTS

Every hospital, nursing facility, home health agency, hospice, and health maintenance organization (HMO) that receives funds under Medicare or Medi-Cal must:

1. Provide written information to each adult individual as required about the right to make decisions concerning medical care, including the right to accept or refuse medical or surgical treatment and the right, under California law, to formulate advance directives;

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2. Maintain and provide to individuals written information about their policies respecting the implementation of such rights;
3. Document in the individual's medical record whether or not the individual has executed an advance directive;
4. Not condition the provision of care or otherwise discriminate based on whether or not the individual has executed an advance directive;
5. Ensure compliance with state law regarding medical treatment decision-making and advance directives; and
6. Provide education to staff and the community on issues concerning advance directives. (Providers can demonstrate compliance with this Medicaid requirement by conducting educational campaigns. This can be accomplished by newsletters, articles in the local newspapers, local news reports, or commercials.)

The written information in numbers 1 and 2 above must be provided to adult individuals as follows:

- o A hospital must give information at the time of the individual's admission as an inpatient.
- o A nursing facility must give information at the time of the individual's admission as a resident.
- o A provider of home health care or personal care services must give information to the individual in advance of the individual's coming under the care of the provider.
- o A hospice program must give information at the time of initial receipt of hospice care by the individual.
- o An HMO must give information at the time the individual enrolls with the organization, i.e., when the HMO enrolls or reenrolls the individual.

IMPLEMENTATION

To assist in the implementation of this federal statute, the California Consortium on Patient Self-Determination was formed. The Consortium is composed of health care providers, professionals, consumers, the Commission on Aging, and the California Department of Health Services. The Consortium

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developed a description of the rights of individuals to make medical treatment decisions and advance directives in California. This description is entitled "Your Right to Make Decisions about Medical Treatment" and is presented in brochure format.

This brochure has been adopted as the description of California law which must be provided to individuals as required by this law. It is intended to be used as a brochure to provide patients, residents, and HMO enrollees with basic information about their rights. A copy is enclosed and directions for its use are found below.

**How to Use the Brochure, "Your Right to Make Decisions about Medical Treatment"**

You may reproduce the enclosed brochure as provided--or you may use exactly the same wording, but have it printed in a brochure of your own. Please ensure that nothing is added or removed within the text.

Please note that the following statement must appear at the end of the description of law: "The California Consortium on Patient Self-Determination prepared the preceding text, which has been adopted by the California Department of Health Services to implement Public Law 101-508."

Information about your own facility's or organization's policies and procedures related to medical treatment decision-making and compliance with advance directives may be added after this approved text. Space is provided at the end of the brochure to either add written information about your policies or to indicate that policy information can be found on an accompanying brochure.

Customizing of the brochure may begin with the answer to the very last question, "How can I get more information about advance directives?" The answer to this question may be modified to provide specific information about where individuals may obtain more information about advance directives either within your organization or in your community. You may also wish to provide a copy of the more detailed brochure titled "Making an Advance Directive", which may be obtained from the Pacific Center for Health Policy and Ethics (See "Resources for Further Information", Page 4).

UPDATES

You will be notified if further information or direction is received from the U.S. Department of Health and Human Services about the requirements of this

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law. It is anticipated that federal regulations will be issued in the near future to implement this statute. Also, if changes in California law necessitate a change to the text of the description of the law, a revised version will be mailed to you by the California Department of Health Services.

RESOURCES FOR FURTHER INFORMATION

The Consortium has developed the Patient Self-Determination Handbook to assist health care providers in complying with these new requirements. The handbook includes a legal summary and copies of related statutes, model policies and procedures, information on providing education and training, and other information to assist providers in implementation of this federal law. Please see the enclosed "PSDA Handbook" brochure for information on how to order the Handbook. For more information and to order copies of the patient brochure in other languages, please contact the Pacific Center for Health Policy and Ethics at (213) 740-2541.

Questions regarding implementation of this new federal statute may also be directed to Marilyn I. Pearman, Health Program Specialist, Licensing and Certification at (916) 324-8628.



Margaret DeBow  
Deputy Director

Enclosure

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